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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,020	11/14/2003	Marni Lynn Hurwitz	0200-4	8389

25901 7590 08/11/2005

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EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/712,020	Applicant(s) HURWITZ, MARNI LYNN	
	Examiner Kim M. Lewis	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> . |

DETAILED ACTION

Drawings

1. The drawings were received on 12/15/04. These drawings are approved by the examiner.

Claim Interpretation

2. In Claim , the means plus function statement invokes 112, 6th paragraph.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,431,622 ("Pyrozyk et al.") in view U.S. Patent No. 3,643,665 ("Caillouette").

As regards claims 1 and 3, Pyrozyk et al. substantially disclose all features of the claimed invention. More specifically, Pyrozyk et al. disclose a thermal bandage providing a cooling effect (note that thermal pack 36 can provide hot or cold), a skin-adhesive portion (constituted by adhesive portions 42 and 44) for affixing the bandage to the body of a user; and a portion (constituted by fluid absorbent member 46) adapted for contact with the area of the body to be covered by said bandage.

Pyrozyk et al. fail to teach that the thermal pack comprises at least one chemical agent and at least one solution, which, when mixed, undergo an endothermic reaction; means for separating said agent and said solution within at least one chamber within a body of said bandage, at least one portion of said separating means being easily broken or ruptured so that said agent and said solution may be mixed, that the separating means includes one of a frangible, tearable or puncturable member, that said chemical agent is provided in dry solid or concentrated solution form, said solution is water, and that the fluid absorbent member is sterile.

However, Caillouette teaches that well known thermal pack comprises a least one chemical agent and at least one solution, which, when mixed, undergo an endothermic reaction, means for separating said agent and said solution within at least one chamber within a body of said bandage and at least one portion of said separating means being easily broken or ruptured so that said agent and said solution may be mixed, that the separating means includes one of a frangible, tearable or puncturable member, that said chemical agent is provided in dry solid or concentrated solution form, said solution is water (col. 1, line 74-col. 2, lines 10).

It would have been an obvious design choice to one having ordinary skill in the art to modify the thermal dressing of Pyrozyk et al. substituting its thermal pack for the thermal pack of Caillouette since the applicant has not stated that the disclosed thermal pack of the instant invention solves a particular problem.

As to the sterility of the absorbent member, it would have been *prima facie* obvious to one having ordinary skill in the art at the time of invention to provide the bandage of Pyrozyk et al. with a sterile absorbent pad since the bandage, hence the absorbent member, can be placed on an open wound (note the abstract).

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pyrozyk et al. in view of Caillouette as applied to claim 1 above, and in further view of U.S. Patent No. 3,900,027 ("Keedwell").

As regards claim 2, the modified device of Pyrozyk et al. fails to disclose that the absorbent portion may be associated with at least one of an antibiotic, an anesthetic, an antipyretic, and a burn medicament.


Keedwell, however, discloses an absorbent pad having thereon an antibiotic (col. 4, lines 19-22) for the inherent purpose of applying therapy to a user. In view of Keedwell, it would have been obvious to one having ordinary skill in the art to provide the modified device of Pyrozyk et al. with an antibiotic on the absorbent pad in order to apply therapy to a user.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-

4796. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
August 6, 2005